competition that GAO rejected as unfair. It had the effect of leaving in California as many as 3,200 jobs for as long as six years after the BRAC decision, or conveniently after the year 2000 Presidential election.

The BRAC monies designated to move jobs and equipment to Utah and elsewhere were mismanaged. They were spent to improve the very facilities at McClellan AFB that the BRAC had intended to close! This, the President and his gang thought, would make it easier for the base to attract private contractors to perform the privatized work in place.

The delay caused by this contrived competition cost the taxpayers an additional $500 million, according to GAO, to sustain the bases' workloads in place, despite the decision of BRAC to ship the workloads to the other Air Force depots.

In May 1998, as many of you will remember, the Secretary of the Air Force was embarrassed by a memo written by his office urging that the Lockheed-Martin bid for the California work win the award. This behavior, to my mind, remains one of the most egregious violations of the Ethics Reform Act I have seen in my 24 years in the Senate. This act prohibits precisely the type of collusion in which the Secretary of the Air Force participated.

It was so outrageous that Secretary Bill Cohen, to his everlasting credit, removed the Secretary of the Air Force from the selection team that would oversee the public-private competition for the McClellan workload.

But this was not the end of the Clinton Administration's meddling: they directed the Air Force to deny the GAO, the congressional watchdog agency responsible for overseeing the expenditure of taxpayers' funds, access to the cost-data and other information used by the Air Force to put together competition for the McClellan workload.

As might be expected, the long-term effect of this mischievous meddling had a cost on readiness. Delays in workload transfer were directly responsible for a severe F–16 parts shortage in 1999. Also, there is a suspicious relationship between the delayed workload transfer and the KC–135 tanker problems early this year when the fleet was grounded because of a rear stabilizer malfunction, a problem akin to the cause of the Alaskan Airline aircraft off the California coast. My personal inquiry into the KC–135 issue demonstrated that if the entire KC–135 team responsible for the repair of this part of the aircraft had been transferred to Utah in a timely way, as directed by the BRAC, the design flaw would probably never have occurred.

There is an answer to BRAC: let Congress endorse the decisions of the military services, without the filter of presidential intervention, whether by a BRAC-like commission or any other procedure. The military services know better than any other body the best and the worst of their installations, the ones that pay their own way, and the ones that drain the taxpayers' pockets. After my state's experience with the BRAC process, I am more inclined to trust this body to evaluate the services' recommendations.

I see that we have a very important guest. I will be happy to yield the floor at this time for Senator HELMS.

VISIT TO THE SENATE BY THEIR MAJESTIES KING ABDULLAH II AND QUEEN RANIA AL-ABDULLAH OF THE HASHEMITE KINGDOM OF JORDAN

Mr. HELMS. Mr. President, I ask unanimous consent the Senate stand in recess for 7 minutes so the Senators may pay their respects to the Honorable King of Jordan and his lovely lady.

There being no objection, the Senate, at 4:56 p.m. recessed until 5:04 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001—Continued

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 3197

Mr. WARNER. Mr. President, the pending business is the amendment offered by the Senator from Arizona; am I not correct?

The PRESIDING OFFICER. The Senator has 33 minutes.

Mr. WARNER. It is my intention to yield back the time, I say to my colleagues. I will wait momentarily, and we can proceed to the vote. Has the vote been ordered, Mr. President?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. WARNER. I ask for the yeas and nays on the McCain-Levin amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Mr. WARNER. Mr. President, we jointly yield back all time. The vote may proceed.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3197. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 35, nays 63, as follows:—

The result was announced—yeas 35, nays 63, as follows:

[Rollcall Vote No. 120 Leg.]

YEAS—35

Bayh	Kennedy	Moynihan
Biden	Kerrey	Reed
Bryan	Kerry	Reid
Byrd	Kohl	Robb
Chafee, L.	Kyl	Rockefeller
DeWine	Landrieu	Roth
Feingold	Leahy	Smith (OR)
Gramm	Levin	Thompson
Grassley	Lieberman	Voinovich
Hagel	Lincoln	Wellstone
Harkin	Lugar	Wyden
Jeffords	McCain	

NAYS—63

Abraham	Dodd	Lott
Akaka	Dorgan	Mack
Allard	Durbin	McConnell
Ashcroft	Edwards	Mikulski
Baucus	Enzi	Murkowski
Bennett	Feinstein	Murray
Bingaman	Fitzgerald	Nickles
Bond	Frist	Roberts
Boxer	Gorton	Santorum
Breaux	Graham	Sarbanes
Brownback	Grams	Schumer
Bunning	Gregg	Sessions
Burns	Hatch	Shelby
Campbell	Helms	Smith (NH)
Cleland	Hollings	Snowe
Cochran	Hutchinson	Specter
Collins	Hutchison	Stevens
Conrad	Inhofe	Thomas
Coverdell	Inouye	Thurmond
Craig	Johnson	Torricelli
Daschle	Lautenberg	Warner

NOT VOTING—2

Crapo Domenici

The amendment (No. 3197) was rejected.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I wish to keep all Senators informed. We are making progress on this bill. We are still anxious to get indications from Senators with regard to their amendments. We are having very good cooperation on both sides. I will address that later this evening.

Under the existing order, I believe it is now the amendment of the Senator from Virginia. Am I not correct?

The PRESIDING OFFICER. That is correct.

Mr. WARNER. I ask unanimous consent that this amendment be laid aside temporarily.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I ask unanimous consent that following the disposition of the Wellstone amendment—that will now be the pending business as soon as I yield the floor. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. WARNER. Following the disposition of the Wellstone amendment, which is subject to a 30-minute time agreement, I ask unanimous consent that Senator ROBERT SMITH be recognized to offer his amendment regarding

security clearances on which there will be 30 minutes equally divided with no amendments in order prior to the vote in relation to the amendment.

Mr. BIDEN. Mr. President, reserving the right to object, I will object, unless I can be assured that I have an agreement to 1 hour equally divided. If I can be put in the order after Senator SMITH, I will not object.

Mr. LEVIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I am trying to move things forward. Senator HELMS and I are working out language. I think we will have an agreement, but I thought I would start speaking on this amendment so we can move this forward.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, this is a sense-of-the-Senate amendment that deals with the importance of condemning the use of child soldiers in dozens of countries around the world. It is also about very important protocol that is being developed and the importance of building support for it and moving forward as expeditiously as possible on this question.

Today, there are 300,000 children who are currently serving as soldiers in current armed conflicts. Child soldiers are being used in 30 countries around the world, including Colombia, Lebanon, and Sierra Leone. Child soldiers witness and are often forced to participate in horrible atrocities.

I am talking about 10-year-olds being abducted, forced to participate in horrible atrocities, including beheadings, amputations, rape, and the burning of people alive. These young combatants are forced to participate in all kinds of contemporary warfare. They wield AK–47s and M 16s on the front lines. They serve as human mine detectors. They participate in suicide missions. They carry supplies and act as spies, messengers, or lookouts.

One 14-year-old girl abducted in January 1999 by the Revolutionary United Front, a rebel group in Sierra Leone, reported to human rights observers:

> I've seen people get their hands cut off, a ten-year-old girl raped and then die, and so many men and women burned alive * * * So many times I just cried inside my heart because I didn't dare cry out loud.

Mr. President, no child should experience such trauma. No child should experience such pain.

Last year, I introduced a resolution expressing the sense of the Congress that U.S. policy permit consensus on language on this optional protocol on child soldiers, directing the State Department to work positively to address its concerns, in language within the United Nations Working Group on Child Soldiers. Today I thank the State Department for its work, and I thank the Department of Defense for its conscientious work, and I thank the Joint Chiefs of Staff for signing off on this protocol. I think it is terribly important work.

On January 21 in Geneva, representatives from more than 80 countries, including the United States, worked out an agreement raising the minimum wage for conscription in direct participation in armed conflict to 18 and prohibiting the recruitment and use in armed conflict of persons under the age of 18 by nongovernmental armed forces. The agreement calls on governments to raise the minimum wage for voluntary recruitment above the current standard of 15 but still allows the armed forces to accept voluntary recruits from the age of 16, subject to certain safeguards.

The Pentagon, and again the State Department, Harold Cohen in particular, have been great to work with. I believe this is a humanitarian crisis that we ought to address now. It is absolutely unbelievable that in the year 2000 we see people as young as age 10 abducted—I have talked to some of the mothers of these children who are abducted—and forced to commit atrocities. It is unbelievable that we see children age 10 cutting off the arms of other people, engaging in murder. It is unbelievable the extent to which young women are abducted, and they themselves are terrorized and raped. This is a practice that takes place in 30 countries around the world involving 300,000 children.

Finally, after years of work, the United Nations has put together an important protocol. We are, I believe, close to supporting this.

In conclusion, this is just a sense-of-the-Senate resolution that the Congress joins in condemning the use of children as soldiers by governmental and nongovernmental armed forces. We talk about the importance of taking this action. We make it clear that it is essential that the President consult closely with the Senate in the objective of building support for the protocol, and we also urge the Senate to move forward as expeditiously as possible.

I think it is important that all of us support this. I urge my colleagues to do so. I want colleagues to know that Congressman LEWIS and Congressman LANTOS on the House side have a very similar resolution.

Mr. DURBIN. Will the Senator from Minnesota yield for a question?

Mr. WELLSTONE. I am pleased to yield.

Mr. DURBIN. I commend my colleague for bringing this issue to our attention. I think it is particularly timely that he would raise this on the floor of the Senate. In a trip to Africa just a few months ago, I discovered the ravages of the AIDS epidemic. There are some 10 million AIDS orphans. These children are likely to become the soldiers in these armies the Senator from Minnesota has just described. The young girls are likely to become either victimized or prostitutes themselves, who are going to really, in a way, continue this cycle of disease and dependency and death.

I commend my colleague from the State of Minnesota, Senator WELLSTONE, for calling this important moral issue to the attention of the Senate. I rise in strong support. I ask him if he has considered the impact of the AIDS epidemic and similar health problems that have created so many orphans in Africa, and now we have the fastest growth of HIV infection in the world in India, and the impact this could have on the issue he has raised.

Mr. WELLSTONE. Mr. President, in the time I have remaining let me say to my colleague from Illinois, I believe my colleague from Illinois, the Senator from California, the Senator from Wisconsin, and others have really brought to our attention the number of citizens, not just children, who are HIV infected, struggling with AIDS. It is a humanitarian crisis of tremendous proportions.

I think for too long the world has just turned its gaze away from this and from the whole question of how to get affordable drug treatment to deal with this, prescription drug treatment, to ways in which our country ought to be more engaged, to ways in which we can encourage governments in Africa to deal directly with this. Finally, we are doing so. My colleague is right, it is also true, for the worst of economic reasons or reasons of desperation, that these young people, including young people infected with AIDS, are the recruits. They become the child soldiers—again, colleagues, 300,000 children, many of them abducted, in 30 countries, used as child soldiers.

This resolution, I think, is terribly important. Our Department of Defense and State Department have worked hard. A year ago, our Government was not supporting this. I think we now have language that is important language. This simply urges the Senate to condemn this practice and talks about the importance of the President moving forward and building support for this protocol, and it calls upon the Senate to act expeditiously on this matter.

I hope there will be 100 votes for this. I thank my colleague Senator HELMS, chairman of the Foreign Relations

Committee, for working with me. We have changed some language, and I think we have a good resolution.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask unanimous consent it be in order for me to speak from my seat.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

Mr. President, I have prepared the best speech you will never hear. I was prepared to have to oppose my friend from Minnesota, but we have come to an understanding about this matter. We have agreed to amend and modify the proposed amendment in a way that makes it satisfactory to me.

AMENDMENT NO. 3211

(Purpose: To express condemnation of the use of children as soldiers and expressing the belief that the United States should support and, where possible, lead efforts to end this abuse of human rights)

Mr. WELLSTONE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE], for himself and Mr. DURBIN, proposes an amendment numbered 3211.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 462, between lines 2 and 3, insert the following:

SEC. 1210. SENSE OF CONGRESS REGARDING THE USE OF CHILDREN AS SOLDIERS.

(a) FINDINGS.—Congress finds that—

(1) in the year 2000 approximately 300,000 individuals under the age of 18 are participating in armed conflict in more than 30 countries worldwide;

(2) many of these children are forcibly conscripted through kidnapping or coercion, while others join military units due to economic necessity, to avenge the loss of a family member, or for their own personal safety;

(3) many military commanders frequently force child soldiers to commit gruesome acts of ritual killings or torture against their enemies, including against other children;

(4) many military commanders separate children from their families in order to foster dependence on military units and leaders, leaving children vulnerable to manipulation, deep traumatization, and in need of psychological counseling and rehabilitation;

(5) child soldiers are exposed to hazardous conditions and risk physical injuries, sexually transmitted diseases, malnutrition, deformed backs and shoulders from carrying overweight loads, and respiratory and skin infections;

(6) many young female soldiers face the additional psychological and physical horrors of rape and sexual abuse, being enslaved for sexual purposes by militia commanders, and forced to endure severe social stigma should they return home;

(7) children in northern Uganda continue to be kidnapped by the Lords Resistance Army (LRA), which is supported and funded by the Government of Sudan and which has committed and continues to commit gross human rights violations in Uganda;

(8) children in Sri Lanka have been forcibly recruited by the opposition Tamil Tigers movement and forced to kill or be killed in the armed conflict in that country;

(9) an estimated 7,000 child soldiers have been involved in the conflict in Sierra Leone, some as young as age 10, with many being forced to commit extrajudicial executions, torture, rape, and amputations for the rebel Revolutionary United Front;

(10) on January 21, 2000, in Geneva, a United Nations Working Group, including representatives from more than 80 governments including the United States, reached consensus on an optional protocol on the use of child soldiers;

(11) this optional protocol will raise the international minimum age for conscription and direct participation in armed conflict to age eighteen, prohibit the recruitment and use in armed conflict of persons under the age of eighteen by non-governmental armed forces, encourage governments to raise the minimum legal age for voluntary recruits above the current standard of 15 and, commits governments to support the demobilization and rehabilitation of child soldiers, and when possible, to allocate resources to this purpose;

(12) on October 29, 1998, United Nations Secretary General Kofi Annan set minimum age requirements for United Nations peacekeeping personnel that are made available by member nations of the United Nations;

(13) United Nations Under-Secretary General for Peace-keeping, Bernard Miyet, announced in the Fourth Committee of the General Assembly that contributing governments of member nations were asked not to send civilian police and military observers under the age of 25, and that troops in national contingents should preferably be at least 21 years of age but in no case should they be younger than 18 years of age;

(14) on August 25, 1999, the United Nations Security Council unanimously passed Resolution 1261 (1999) condemning the use of children in armed conflicts;

(15) in addressing the Security Council, the Special Representative of the Secretary General for Children and Armed Conflict, Olara Otunnu, urged the adoption of a global three-pronged approach to combat the use of children in armed conflict, first to raise the age limit for recruitment and participation in armed conflict from the present age of 15 to the age of 18, second, to increase international pressure on armed groups which currently abuse children, and third to address the political, social, and economic factors which create an environment where children are induced by appeal of ideology or by socio-economic collapse to become child soldiers;

(16) the United States delegation to the United Nations working group relating to child soldiers, which included representatives from the Department of Defense, supported the Geneva agreement on the optional protocol;

(17) on May 25, 2000, the United Nations General Assembly unanimously adopted the optional protocol on the use of child soldiers;

(18) the optional protocol was opened for signature on June 5, 2000; and

(17) President Clinton has publicly announced his support of the optional protocol and a speedy process of review and signature.

(b) SENSE OF CONGRESS.—(1) Congress joins the international community in—

(A) condemning the use of children as soldiers by governmental and nongovernmental armed forces worldwide; and

(B) welcoming the optional protocol as a critical first step in ending the use of children as soldiers.

(2) It is the sense of Congress that—

(A) it is essential that the President consult closely with the Senate with the objective of building support for this protocol, and the Senate move forward as expeditiously as possible;

(B) the President and Congress should work together to enact a law that establishes a fund for the rehabilitation and reintegration into society of child soldiers; and

(C) the Departments of State and Defense should undertake all possible efforts to persuade and encourage other governments to ratify and endorse the new optional protocol on the use of child soldiers.

Mr. WELLSTONE. Mr. President, I say to colleagues, I will not require a recorded vote. If we want to go forward with a voice vote, that will be fine with me if it is fine with my colleague.

Mr. WARNER. Mr. President, I strongly urge we consider this matter by voice vote.

I urge the question.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 3211) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. WELLSTONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3210

(Purpose: To prohibit granting security clearances to felons)

Mr. SMITH of New Hampshire. Mr. President, I call up my amendment No. 3210 at the desk and ask for its immediate consideration.

Mr. LEVIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state the inquiry.

Mr. LEVIN. Do I understand there is a pending Warner amendment which is being temporarily laid aside for this?

The PRESIDING OFFICER. There is no pending Warner amendment. There was just an agreement that Senator WARNER be recognized to offer an amendment. If he does not seek recognition, he waives that right.

Mr. WARNER. Mr. President, I just ask that be temporarily laid aside.

Mr. LEVIN. Mr. President, what is being temporarily laid aside if there is not a pending amendment?

Mr. WARNER. It is the right to offer the amendment.

The PRESIDING OFFICER. The right to offer the amendment.

Mr. LEVIN. So as I understand it, after the disposition of the Smith amendment, there would be an opportunity for Senator WARNER to offer an amendment?

The PRESIDING OFFICER. That is correct.

Mr. LEVIN. Am I correct, as the manager of the bill he would have that opportunity in any event? If he sought recognition, he would be first to be recognized after the leadership; is that correct?

The PRESIDING OFFICER. The Senator is correct.

The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, this amendment No. 3210——

The PRESIDING OFFICER. The Senator will withhold.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], proposes an amendment numbered 3210.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

SEC. . PERSONNEL SECURITY POLICIES.

No officer or employee of the Department of Defense or any contractor thereof, and no member of the Armed Forces shall be granted a security clearance unless that person:

(1) has not been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(2) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(3) has not been adjudicated as mentally incompetent;

Mr. SMITH of New Hampshire. Mr. President, this amendment is really quite simple. It involves the issue of whether or not a felon should get a security clearance. That is the essence. If you favor felons having a security clearance, you would vote against my amendment. If you think it is wrong that convicted felon should have a security clearance, then you would vote with me.

On April 6 there was a hearing the Armed Services Committee held that touched upon an important and urgent issue, that of the longstanding protections set in place to guard the most vital secrets of the Nation and of our national security community. But we had a virtual security meltdown in this administration, from our DOE labs to people without clearances getting White House passes, to the recent scandal of missing and highly classified State Department laptops. It goes on and on. While we couldn't possibly begin to address all our Nation's security deficiencies within this one authorization bill, I believe we can make progress in one very specific area.

A reporter by the name of Ed Pound of USA Today has done an outstanding job with recent news reports and investigative reporting on this issue.

Mr. President, I ask unanimous consent that articles written by Mr. Pound from USA Today be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PROBE OF SECURITY CLEARANCES URGED—SENATOR SAYS CONTRACT HIRINGS POSE A THREAT

(By Edward T. Pound)

WASHINGTON.—Sen. Bob Smith, R–N.H., urged the Senate Armed Services Committee Tuesday to investigate why the Defense Department is granting high-level security clearances to employees of military contractors who have long histories of problems, even criminal activity.

Smith, a senior member of the armed services panel, asked its chairman, Sen. John Warner, R–Va., to conduct the inquiry and hold a hearing. In a letter to Warner, Smith said industrial espionage is on the upswing. ''One person can cause immeasurable damage to national security,'' he wrote.

Smith said that white felons can't vote in some states, they have been allowed by the Pentagon to retain access to sensitive classified information. ''This doesn't pass the smell test,'' he said.

Warner could not be reached Tuesday for comment.

Smith is chairman of the Environment and Public Works Committee. He is the second senior senator to seek reform in the wake of a USA TODAY story last week. It detailed how the Defense Office of Hearings and Appeals, or DOHA, regularly granted clearances to contractors with histories of drug and alcohol abuse, sexual misconduct, financial problems or criminal activity.

Sen. Tom Harkin, D–Iowa, urged Defense Secretary William Cohen last week to correct the situation. ''All necessary steps must be taken to correct this problem immediately,'' he said in a statement. ''Our nation's security depends on it.''

The General Accounting Office, the investigative arm of Congress, also will review DOHA and other Pentagon clearance agencies. While defending DOHA, a Pentagon spokesman said that any problems uncovered by the GAO would be corrected.

In his letter, Smith also asked Warner to explore why the Defense Department is struggling to process security background investigations, which serve as the basis for issuing clearances. The Pentagon has a backlog of more than 600,000 investigations for renewals of clearances. Smith and others say the problem poses a national security risk because spies usually are trusted insiders.

Smith said many clearances granted by DOHA violated an executive order issued by President Clinton in 1995. It requires that clearances be issued only to those whose history indicates ''loyalty in the United States, strength of character, trustworthiness, honesty, reliability, discretion and sound judgment.''

Clearance officials evaluate security applicants under ''adjudicative guidelines,'' the standards for granting clearances. They cover, among other matters, allegiance to the United States, foreign influence, security violations, sexual behavior, financial problems criminal conduct, and drug and alcohol abuse.

Smith said the armed services panel could force reform. ''I would strongly urge you to task your staff to investigate'' the clearance problems, Smith wrote Warner. He said an inquiry could ''restore integrity and quality control'' to the clearance process.

[From USA Today, Dec. 29, 1999]

FELONS GAIN ACCESS TO THE NATION'S SECRETS

(By Edward T. Pound)

WASHINGTON.—As a teenager, he was in trouble many times and built an imposing rap sheet: delinquency, disorderly conduct, resisting arrest, attempted theft, possession of a deadly weapon, possession of marijuana, five counts of burglary and three of theft. He got jail time and probation.

In 1978, at age 21 and a heavy drug user, he and two accomplices kidnapped, robbed and murdered a fellow drug user. He was charged in the murder, convicted and sentenced to 30 years in prison.

Today, at 42, he is out of prison and working in a white-collar job in the defense industry. He remains on parole until 2006. As a convicted felon, he can't vote in many states. But under federal law, he can and does hold a government-issued security clearance, a privilege that allows access to sensitive classified information off-limits to most Americans.

His case is not exceptional. A USA Today review of more than 1,500 security clearance decisions at the Department of Defense shows that a Pentagon agency regularly grants clearances to employees of defense contractors who have long histories of financial problems, drug use, alcoholism, sexual misconduct or criminal activity.

Applicants have been given sensitive clearances despite repeatedly lying about past misconduct to Defense Department investigators. One employee lied at least four times about his drug history, including twice in sworn statements. Officials didn't refer the matter to the Justice Department for prosecution, something they rarely do; instead, they allowed him to retain his secret-level clearance.

In other instances, contractor employees involved in significant criminal frauds were granted clearances. So, too, were applicants who had violated state and federal laws by not filing income tax returns for several years, including a woman who had not submitted timely returns for 11 years because she was depressed.

Another employee mishandled classified material during a five-year period but didn't lose his top-secret access. A clearance official excused his actions because he had been working in a ''pressure-cooker environment.''

All of these clearances were approved by the Defense Office of Hearings and Appeals, or DOHA, a little-known Pentagon agency that decides whether to grant or deny clearances to employees of defense contractors. The decisions were made by DOHA (pronounced DOUGH-ha) administrative judges. They rule in cases in which applicants seek to overturn preliminary decisions denying them access to classified information.

DOHA's quasi-judicial program, now in its 40th year, was developed to give employees of contractors the right to review the evidence against them and to challenge denials in hearings, if they so choose, before an administrative judge. Most clearance decisions are made by other DOHA officials and never reach the judges.

About two-thirds of the time, the judges decide against granting clearances. However, their approval of clearances for some employees with deeply troubled histories concerns other clearance officials in the military as well as security investigators in the Defense Department.

They argue that DOHA has gone too far, granting clearances to unstable people who

might pose a risk to national security. They worry that some employees with pressing financial problems might sell secrets to foreign powers or that others, vulnerable because of embarrassing personal problems, could be blackmailed into espionage.

Army and Navy clearance officials criticize the agency for being too ''lenient.'' Along with former DOHA officials, they complain that the agency sometimes ignores the government's ''adjudicative guidelines''—the standards for granting clearances—in issuing decisions.

''To be honest with you, I think DOHA often finds in favor of the individual and not national security,'' says Edwin Forrest, executive director of the Navy's Personnel Security Appeal Board, which reviews clearance appeals from Navy employees. ''What we see coming from DOHA are decisions that go outside the envelope—outside the adjudicative guidelines.''

Howard Strouse, a former senior DOHA official who retired last January, is blunt: ''Any Americans who looked at these DOHA decisions would be horrified. To know that we are giving clearances to some of these people is just intolerable.''

But DOHA officials strongly defend their program and say they put national security first. ''The decisions speak for themselves,'' says Leon Schachter, the agency's director the past 10 years. ''Do I believe in, or agree, with every decision? Of course not. But it is important to treat people fairly, and we have a system designed to be fair.''

He says the idea is not to punish security applicants for past misconduct. ''The goal is to understand past conduct and predict the future on it,'' he says. ''We are being asked to use a crystal ball. It is a very difficult job.''

Indeed it is. On the one hand, President Clinton, in an August 1995 executive order governing access to classified information, directed that government clearances should be given only to people ''whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment.''

But the guidelines for granting clearances give administrative judges and other federal clearance officials leeway to consider ''mitigating'' circumstances: an applicant who had committed a crime, for instance, might get a clearance if the crime was not recent and there was evidence of rehabilitation.

DOHA reviews cases involving access to classified information at three levels of sensitivity: top-secret, secret and confidential. A presidential directive says top-secret information, if disclosed, could cause ''exceptionally grave damage'' to national security; secret, if disclosed, could cause ''serious damage''; and confidential, if revealed, could cause ''damage.''

Classified material covers a lot of ground. It includes the design plans and other data on dozens of weapons systems, such as bombers and nuclear submarines, and information on spy satellites, sophisticated technology and communications systems. But it also includes such things as the composition of the radar-absorbing coatings on Stealth bombers and the names of employees who work on sensitive projects.

People within the contracting community with access to classified information aren't jut top officials. They include consultants, scientists, computer specialists, analysts, secretaries and even blue-collar workers such as janitors and truck drivers with access to classified areas.

The quality of DOHA's decisions is vital. Though none of the cases involved DOHA decisions, according to agency officials, a government report says 12 contractor employees have been convicted of espionage in the past 17 years. And in the aftermath of the Cold War, industrial espionage is on the upswing. Spies from dozens of nations—some of them friendly—have stepped up efforts to gather industrial intelligence on technologies used in U.S. weapons systems.

Meanwhile, the Pentagon is struggling to process security background investigations, which serve as the basis for clearance decisions. It has a backlog of more than 600,000 periodic reinvestigations—cases in which defense employees and contractor personnel are to be re-evaluated.

The backlog is significant. Spies traditionally are trusted insiders. Many cases reviewed by DOHA involve requests to retain clearances. This backlog was disclosed last summer by USA Today in an examination of the Defense Security Service, another Pentagon agency, which conducts the background checks.

In its inquiry into DOHA's actions, USA Today reviewed decisions issued by the agency's 15 administrative judges since 1994. Under the Privacy Act, DOHA deletes the names and other identifying information from the files. The judges review 300 to 400 cases a year. USA Today requested interviews with two senior judges, but the Pentagon wouldn't make them available.

In the case involving the murder, government lawyers sought to block the clearance, but Administrative Judge Paul Mason wrote that the man had earned a college degree and had reformed.

''Against the heinous nature of the crime,'' he wrote, ''are the positive steps applicant has taken over the years in making himself a productive member of society.'' He said he was persuaded the ''applicant was genuinely remorseful'' and would not resume a criminal career.

The man's lawyer, James McCune of Williamsburg, Va., won't discuss the criminal case. But, he says, clearance decisions must be weighed carefully because employees often lose their jobs when they lose their clearances. ''It is really a black mark,'' he says.

A sampling of other approvals:

On Aug. 27, 1997, Administrative Judge John Erck ruled that a 43-year-old man who had participated in a scheme to defraud the Navy of $2 million could keep his secret-level clearance. The man was employed at the time of the fraud, in 1991, as a ship's master for a company that operated ships for the Navy in the U.S. Merchant Marine program. He and other employees submitted false time sheets for overtime to assist their financially troubled company. Judge Erck wrote that the fraud was not recent and that although it amounted to ''serious criminal activity,'' he was ''impressed'' with the applicant's ''honesty and sincerity.''

That same year, Administrative Judge Kathryn Moen Braeman allowed a 30-year-old employee of a defense contractor to keep his secret clearance, even though he was a convicted sex offender and on probation. The man was convicted in a state court of two felony charges of criminal sexual contact with a minor in June 1996, less than a year before the administrative judge's decision.

The case file shows the man fondled his 8-year-old stepdaughter and on 50 occasions entered her bedroom and masturbated while she was asleep. Braeman said there were ''mitigating'' circumstances: the man, she wrote, had completed counseling in a sex-offenders program and his therapist did not believe the pedophilia with his stepdaughter would recur. According to Braeman, the therapist concluded the man would always have a sexual interest in children but had learned through therapy to control himself.

A 42-year-old employee of a defense contractor was given a secret clearance by Chief Administrative Judge Robert Gales, although earlier in his career, as an investor, he had been convicted of bank fraud, imprisoned and ordered to pay $150,000 restitution. According to DOHA files, the man ''made false entries'' on loan forms to obtain $2.3 million in mortgages. He pleaded guilty in December 1994. Two years later, while the man remained on probation in the criminal case, Judge Gales approved his clearance; Gales cited his cooperation with prosecutors and said he had ''clean(ed) up his act.''

Judge Erck approved a secret clearance for the 53-year-old owner of a defense contracting business despite his long history of violent altercations with others. In one case, the decision shows, the man tried to bulldoze another car blocking his exit from a parking lot. In another incident, Erck wrote, he ''challenged'' a state court judge in court after the judge ruled in favor of the other party in a civil lawsuit. Police were called and ''an altercation occurred,'' according to Erck. The man was arrested and jailed for resisting arrest. In a third incident, he left a threatening message on his ex-wife's answering machine advising her he had a ''shotgun and two Uzis'' and was coming to her house to get his son. Police arrested him at his former wife's house and he was jailed on an assault conviction.

''There is an obvious nexus between Applicant's criminal conduct and the national security,'' Erck wrote in his decision. ''An individual who repeatedly loses his temper and breaks the law is much more likely to violate security rules and regulations.'' Nonetheless, Erck granted the clearance. He said the man had become active in the church and had learned to control his temper. He was, Erck wrote, a ''changed man.''

In February 1996, a 44-year-old computer software engineer was allowed to retain his top-secret clearance despite a 10-year history of sexual exhibitionism. Once, in the early morning, he stood naked outside the kitchen door of a 26-year-old woman and masturbated. The police were called and he was charged with two felonies, including ''gross lewdness.'' The man's ''history of exhibitionism reflects adversely on his judgment, reliability and trustworthiness,'' Administrative Judge Elizabeth Matchinski wrote. But, she added, ''his contributions to the defense industry in combination with his recent pursuit of therapy'' justified giving him a clearance.

Those cases are not unusual. There are other similar decisions in DOHA's files.

The DOHA process grew out of the abuses of the McCarthy era in the 1950s when many people were attacked for alleged Communist ties. President Eisenhower, acting after the Supreme Court ruled that contractor employees had the right to a hearing if their clearances were jeopardized, issued an executive order requiring hearing procedures.

The vast majority of cases processed by DOHA never go before the agency's 15 judges.

When they do review cases, the judges deny clearances in many egregious cases, or their approvals are overturned by the DOHA Appeal Board composed of three of their own members. One example: a 59-year-old man convicted of sexually abusing his granddaughter, a felony, was approved for a clearance by an administrative judge. The appeal

board reversed the decision. It said the judge's decision was ''arbitrary, capricious, and contrary to law.''

Judges and other government clearance officials make decisions based on government-wide adjudicative guidelines. The guidelines cover, among other things, allegiance to the United States, foreign influence, sexual behavior, financial considerations, alcohol and drug use, security violations and criminal conduct. Applicants are evaluated under the ''whole person'' concept, which requires both favorable and unfavorable information to be considered.

Clearance officials are urged to make ''common sense'' determinations. ''The individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior,'' the guidelines state.

They also require clearance officials to err on the side of national security. ''Any doubt as to whether access to classified information is clearly consistent with national security,'' they state, ''will be resolved in favor of the national security.''

Most people pass the guidelines without a hitch. Tens of thousands of military and contractor personnel are cleared each year. The Defense Department says only 2% to 4% of its applicants are denied a clearance or have their existing access revoked. In 1998 the Pentagon denied or revoked clearances in 3,516 cases, including 628 contractor employees. About 2.4 million people hold Pentagon-issued clearances.

DOHA's role is not limited to contractor employees. Its judges also review appeals from military personnel and civilian employees of the Defense Department. The judges issue ''recommended decisions,'' but those opinions are not binding. Final decisions are made by clearance boards established by the Pentagon. Each branch of the service and the Pentagon's administrative arm, Washington Headquarters Services, have their own clearance boards, known as Personnel Security Appeal Boards, or PSABS.

Those PSABs often reject the judges' recommendations to grant clearances to people with background problems. DOHA statistics show that the judges recommended granting clearances in 271 of 740 cases they have reviewed since 1995. The PSABs rejected the advice in 120 cases, or 44% of the time.

The PSABs say they are tougher.

''We are not saying that everybody who drinks too much is a security threat,'' says K.J. Weiman, executive secretary of the Army's PSAB. But, he says, screeners must be concerned when people have financial problems, histories of drug use or heavy drinking.

''For instance, are you a quiet drunk or are you a talkative drunk?'' he asks. ''Are you the kind who will have too many drinks and you are sitting in a bar and saying, 'Did you know this, that, there is a terrorist threat out for Y2K?' ''

Private lawyers who represent clients in clearance cases defend DOHA. They say the military process doesn't give applicants all the rights they should have and say the importance of the whole-person concept cannot be over-emphasized.

Sheldon Cohen, an attorney in Arlington, VA., says the government must evaluate the whole person in deciding whether to approve or reject a clearance: ''The use of a variety of drugs by a person in high school or college, even to a substantial degree, might not disqualify that person, while a single use of marijuana by an adult while that person held a security clearance would probably cause loss of a clearance.''

Adds Elizabeth Newman, a Washington lawyer. ''The fact we don't want them as neighbors does not mean they will misuse classified information.''

But some former DOHA employees believe there has been too much ''lawyering.'' A clearance is a privilege, not a right, and the Supreme Court has so ruled, they say.

Howard Strouse, the retired DOHA official who was based in Columbus, Ohio, supervised the preparation of many administrative cases against contractor employees over a 14-year-period. He is frank in his assessment of the agency.

DOHA is doing a lousy job, he says.

''DOHA is due process heaven, and I'm not proud of that,'' he says. ''You want due process, yes, but these attorneys and judges who work for DOHA have to realize they work for the government, and we are talking about national security.''

Strouse says there were countless times when he and his staff pressed cases against applicants with questionable backgrounds but were overruled by the headquarters office in Arlington, VA.

''In looking at some of these administrative judge decisions,'' he says, ''you are only seeing the tip of the iceberg.''

He says he had frequent disputes with senior DOHA lawyers and Schachter, the agency's director, over ''liberal'' decisions. He says Schachter talked about how no spies have ever been cleared by DOHA. But, Strouse says: ''Of course, he can't be disputed because there hasn't been a spy to come up. But I'm sure they are out there. Industry has long been a problem for spying.''

Schachter declined to answer many questions. In a letter to USA Today, he wrote: ''Sensationalizing a few cases distorts the overall record of seriousness, professionalism and dedication reflected throughout the DOHA staff and judges.''

But Thomas Ewald, who directed security background investigations for the Defense Department before retiring in 1996, worries that some DOHA decisions will come back to haunt the agency. ''There is no question that all of us in the business felt that many clearances should be denied that weren't,'' he says. ''It only takes one person to cause untold damage to national security.''

[From the USA Today, Jan. 4, 2000]

EASY ACCESS TO NATION'S SECRETS POSES SECURITY THREAT

GAO, USA TODAY reports show erosion of standards for clearances.

''No one has a right to a national security clearance.'' At least, that is what the Supreme Court said in 1988, ruling that the government should grant clearances ''only when consistent with the interests of national security.''

Yet, as an outraged Sen. Tom Harkin, D–Iowa, noted, citing a special report in USA TODAY last week, the Pentagon ''apparently has an 'ask don't care' policy when it comes to contractor security clearances.'' And this week, Congress' General Accounting Office (GAO) announced that it is undertaking a new inquiry to determine whether the Defense Department consistently complies with government guidelines for issuing clearances.

There's good reason to wonder. The USA TODAY report detailed numerous instances of defense contractors' workers receiving top-secret clearances despite long histories of financial problems, drug use, alcoholism, sexual misconduct and even criminal activity.

One was awarded a clearance while on probation for bank fraud. Another was allowed to keep his high-level clearance after taking part in a $2-million fraud against the Navy. Another had a history of criminal sexual misconduct for which he was still receiving therapy.

Such behavior runs counter to President Clinton's 1995 executive order requiring that recipients of clearances have a personal and professional history showing ''loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion and sound judgment.''

And it's not the first example of the Pentagon's relaxed-fit attitude when it comes to maintaining the integrity of the security-clearance system that is designated to protect the nation's top secrets. As previous USA TODAY and GAO investigations have shown in recent months, the Pentagon has a backlog of more than 600,000 investigations for renewals of clearances. The GAO also concluded that ''inadequate personal-security investigations pose national security risks.'' It found that 92% of the investigations it audited were deficient on matters including citizenship and criminal history.

Oversight wasn't the problem with the cases cited by USA TODAY last week. Those individuals received clearances because special judges in the Defense Office of Hearings and Appeals overruled Pentagon investigators and the office's own lawyers.

Hearings before such judges provide a needed level of protection against the arbitrary and capricious denial of security clearances by the government. People can correct facts and provide mitigating evidence to prove they aren't a threat to national security.

But prove that they must. And standards shouldn't be lowered for private contractors' employees. Defense contractors build the nation's advanced weapons. They develop the software and hardware for guarding the country's infrastructure and mapping attack or defense plans. Their secrets are as important as any at the Pentagon.

Harkin is demanding that the Pentagon demonstrate that it is taking steps to ''ensure that security clearance is not granted to people likely to abuse the privilege.''

As a start, investigators, hearing judges and defense contractors should consider the Supreme Court's message a reminder. Don't allow national security clearances to endanger national security.

A SECURITY CHECK

In deciding whether to grant security clearances, federal guidelines require judges to consider the following factors: Allegiance to the United States, Foreign influence, Sexual behavior, Personal conduct, Financial considerations, Alcohol consumption, Drug involvement, Emotional, mental and personality disorders, Criminal conduct, Security violations, Outside activities, and Misuse of information technology systems.

Mr. SMITH of New Hampshire. At the Defense Office of Hearings and Appeals, USA Today reported that felons, convicted felons—I want my colleagues to listen carefully here—convicted felons, including a murderer, individuals with chronic alcohol and drug abuse problems, a pedophile, an exhibitionist—all received security clearances in order to work for defense contractors.

I want to repeat that because I think most people would say, you have to be kidding, that really happened? The answer is yes, which is why this amendment is so urgently needed. This was

investigative reporting by USA Today that reported that a murderer, people with chronic alcohol and drug abuse problems, a pedophile, and an exhibitionist received security clearance to work for defense contractors.

There was another individual who was awarded a clearance while on probation for bank fraud. Yet another was allowed to keep his clearance after taking part in a $2 million fraud against the U.S. Navy. Another had a history of criminal sexual misconduct for which he was still undergoing therapy.

For goodness' sake, I say to my colleagues, most of us and the American people would say: Gee, to get a security clearance, that is a big deal; you get to see all the secrets. At least that is what the people think. We have different levels of security clearances, from confidential, to secret, to top secret, to code level. These are security clearances for individuals who have no right to get those clearances, and I think every American would agree: $2 million in fraud against the U.S. Navy, pedophiles, murderers, chronic alcohol and drug abusers getting security clearances to see the highest classified material on various defense contracts.

An even more egregious example is that an administrative judge at the Defense Office of Hearings and Appeals—that is who hears these cases—granted a clearance to a defense contractor's project manager who had a lengthy history of drug and alcohol abuse, including two convictions of selling cocaine for which he served two separate terms in Federal prison. Overriding Government lawyers who said this man's criminal past made him ineligible for a clearance, the judge at this defense hearing ruled this individual ''had no desire to ever engage in criminal conduct again.''

I repeat. This is an individual who was granted a clearance by an administrative judge at the Defense Office of Hearings and Appeals. He had a lengthy history of drug and alcohol abuse, including two convictions for selling cocaine and served two separate prison terms for it. The Government lawyers said: No, this guy should not have a clearance; what are you talking about here?

They were overridden. The judge ruled the individual ''had no desire to ever engage in criminal conduct again.'' Therefore, we will give him his clearance.

The case in point, when somebody else comes along tomorrow and says: Yes, I robbed a couple of banks, killed a couple of people, but I am sorry; I will not do it again if you will just give me my security clearance, that is what I am talking about. That is the logic: Yes, I sold a little cocaine, maybe I used a little cocaine; I am sorry. Can I have my clearance? I want to get access to classified secrets so I can work for a defense contractor.

It is unbelievable to think this is happening in our Government, but it is. Common sense dictates that one convicted murderer or one convicted drug dealer with a security clearance is one too many.

I have been told by at least one former DOD official that the USA Today's reported cases of felons granted security clearances is probably only the tip of the iceberg. These are the ones we know about.

I am also informed that the Defense Office of Hearings and Appeals is the only organization dictated to by attorneys, while in the others—for example, the military services—the security specialists are in charge. We want the security specialists to be in charge, and apparently they are not.

A frequent complaint is when there is reasonable doubt about an applicant, the Defense Office of Hearings and Appeals judges rule in favor of the applicant rather than the national interest. This is a very important point. Do you err on the side of national defense, national security, national interest, or do you err on the side of the individual?

This is not rocket science, and it is not a big deal about how they do this. Yet it is happening. In other words, err on the side of the individual; he will be OK; he is sorry; he is not going to do it again; do not worry about the cocaine; do not worry about the murder; do not worry about that; it is fine; we think he will be OK so we are going to err on his side, not on the side of national security.

I say to my colleagues, we all have staff who get security clearances. My colleagues know how tough it is to get them and how long they wait and what they put these guys and gals through. My colleagues know what is on the forms and how long it takes to get a clearance. It is an outrage this is occurring.

The adjudicative guidelines require that national security be the first priority. Those are the guidelines. These guidelines are not being enforced. As my colleagues watch me, they must be thinking: This cannot be true; he has to be blowing smoke; no way.

It is true. I have researched these cases. Senator HARKIN, who has done an outstanding job, has also researched these cases. Senator HARKIN is with me on this amendment. In fact, he first helped bring this to my attention.

When I repeatedly questioned the DOD general counsel at the April 6 hearing about whether it is acceptable to grant a clearance to an individual who committed a cold-blooded murder, he would not say no to my question.

I said to him: Is it acceptable ever to grant a clearance to an individual who committed a cold-blooded murder? I wanted him to say no. I gave him every opportunity to say no, but he refused to say no.

If you do not say no, it has to mean there is a time when it is in the interest of the individual, never mind national defense, to grant the clearance because he may not commit a murder anymore and he might be great. He could be the greatest contractor employee the Defense Department ever saw, but do we want to take the chance? Do we want to take a chance?

If my colleagues had a staff member who was asking for a security clearance—I do not know if they would be working for them if he or she committed a murder, but if they did and tried to get one, good luck. We know they would not get it. Therefore, if that is the rule for staff, then it ought to be the rule for those contractors who work for the Defense Department.

Senator HARKIN's press release about this scandal when it broke argued very persuasively:

> No one has a right to a national security clearance.

No one has a right to it. Senator HARKIN, who testified at the SASC hearings on the DSS and DOHA, argued people go through intense scrutiny just to serve on the Commission on Library Sciences, and they do not have to handle any Government secrets. We should at least have the same high standards for those holding security clearances as we require of those serving on the Commission of Library Sciences. Senator HARKIN is absolutely right. I agree with him.

Additionally, there were examples of the Defense Office of Hearings and Appeals granting clearances to people with recent drug and alcohol addictions. Why is the Defense Office of Hearings and Appeals, knowing there will always be risks that some people with clearances will betray their country for money or for ideology, placing an additional risk into the system by giving these felons clearances? Why do we take the risk? There are many good, decent people who have never committed a crime in their lives who do not gain access to classified material because they do not need to know and, therefore, they do not get their clearances because they do not need to know. Why does a convicted murderer, rapist, or convicted drug dealer need to know? The answer is simply they do not.

You might say: We should give this person a chance. No, we should not, no, no, no; not if we are going to risk the national defense of our country, we should not give them a chance.

As Senator HARKIN has said: It is not a right. It is a privilege that you earn. Additionally, there were examples of, as I said, clearances for those with recent drug and alcohol problems. Why would we want these convicted lawbreakers given access to these secrets? We know how much damage just one individual can wreak on national security. We have heard the stories—the legacy of Aldrich Ames, Jonathan Pollard, and the Walkers, the Rosenbergs. Go back as far as you want to

go. It is well known to all of us who have dealt with national security issues, we simply cannot afford to have loose standards when it comes to protecting our secrets and protecting lives. They are loose enough as it is.

We have had stolen secrets from our atomic weapons labs going to the Chinese. We certainly do not need to invite people into critical areas, where sensitive technology and sensitive information is bandied about, to have a person who would have that kind of a background to get a security clearance.

I emphasize, again, I know in America we are all in favor—and I am, too—of giving people a break, giving a person a chance, giving them a second chance, but not when it comes to national security.

I guarantee you, for every cocaine dealer you think is fine now and would be a great person to work for a Government contractor—I guarantee you—there are 100 who never had any cocaine convictions who would be just as good. I guarantee it. We ought to start looking down the line to find them.

In some States, an individual would lose his or her right to vote based on a felony conviction. The 1968 Gun Control Act stripped individuals convicted of felonies of their constitutionally protected second amendment right. I have known of an instance where a Capitol Hill staffer was denied a clearance because he was a few months behind in his student loan payment.

Keep in mind, a security clearance is not a right; it is a privilege. In fact, it is more than that. It is an honor. That says something about this person, that this is a special person who can be trusted with the secrets, sensitive information about the U.S. Government, about the weapons we make.

To say that we would dumb those standards down at that level is a disgrace and, frankly, it is an embarrassment to our country, to our Government, to our Defense Department, to our administration, to everybody involved, and, yes, even an embarrassment to the members of the Armed Services Committee of the Senate that this is happening. It is an embarrassment. The only way to correct it is to stop it and say it is wrong.

Right now you can have a felony conviction and still be granted a clearance and access to sensitive secrets; and that does not pass the commonsense test. It does not pass the smell test, folks, that a convicted murderer can be granted a security clearance. Believe it or not, they had an explanation for it. It was not a good one. They had an explanation for it: He's reformed now. He's OK now.

In conclusion, the bottom line is, my amendment is very simple. It would prevent DOD from granting security clearances to those who have been convicted in a court of a crime punishable by imprisonment for a term exceeding 1 year. It would also disallow a clearance for anyone who is an unlawful user or addicted to any controlled substance or has been adjudicated as mentally incompetent or has been dishonorably discharged from the U.S. Armed Forces.

It is sad, though, that we have to pass an amendment on the floor of the Senate, add language to the DOD authorization bill that says the people who do these things—the people who review these cases, who review these individuals—we have to pass an amendment which is nothing more than common sense that says you cannot put murderers and felons and cocaine dealers, people who have been convicted of these crimes, in positions where they have access to national security information. We have to pass an amendment because the people we put in charge are not doing this, are not stopping this. Can you imagine that?

That is what it has come to. I am embarrassed by it. But I will tell you what. I would rather be embarrassed by it than have it continue to happen, where our secrets get compromised because somebody could be compromised as a result of this kind of background.

We cannot take all the risks out of the system no matter how good we are, no matter how good the DOHA, the Defense Office of Hearings and Appeals. No matter how good they are, they are going to make mistakes. That is human. Sometimes people such as Pollard and Walker get clearances, unfortunately. And they ought to pay the price for it when they are caught. But let's not take this kind of ridiculous risk and dumb down the entire operation.

I might add—it does not say this in the amendment—if we have people who are looking at these cases, and assessing the risks, and they are concluding that people with these kinds of backgrounds can get security clearances, we may want to change some of the people who are doing the evaluating as well. That may be the next step if it does not stop.

I regret that many of the committee members missed the DSS, the Department of Security Services, and the Defense Office of Hearings and Appeals hearing that we had because it was an eye-opener for me. Even though I read the press articles relating to the scandal, I was surprised those individuals I questioned—when I gave them the opportunity when I questioned them—still said they would not say no when I asked them whether they believed it would be all right to give somebody such as that a clearance. They would not say no, which gives me the impression there would be circumstances where they should be able to get the clearances.

That is my amendment. I know the manager of the bill is not prepared to vote at this time. But at this point, Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. SMITH of New Hampshire. Mr. President, I yield the floor.

I will take this moment to thank my colleague, Senator WARNER, the chairman of the committee, for the outstanding leadership he has provided as the chairman of the committee.

Mr. WARNER. Mr. President, I thank my colleague and simply say we are endeavoring and working with the other side of the aisle to see if we might come up with some clarification to his amendment.

I yield the floor.

AMENDMENT NO. 3214 TO AMENDMENT NO. 3210

Mr. MCCAIN. Mr. President, I send a second-degree amendment to the pending amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, Mr. FEINGOLD and Mr. LIEBERMAN, proposes an amendment numbered 3214 to amendment No. 3210.

Mr. MCCAIN. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. MCCAIN. Mr. President, I offer this amendment on behalf of myself, Senator FEINGOLD, and Senator LIEBERMAN.

This amendment would mandate that the names of contributors to entities operating under section 527 of the Tax Code be disclosed. This amendment is simple. It is straightforward. It would impose no substantial burdens on any entity. And most importantly, it is constitutional and in no way infringes on the free speech of any individual or group.

Before I discuss the matter further, I thank my colleagues, Senator LIEBERMAN and Senator FEINGOLD, for all they have done to close this 527 loophole. They have been stalwarts in this effort, and their hard work and dedication deserves note and praise. In fact, Senator LIEBERMAN has separate legislation supported by myself and Senator FEINGOLD on this very issue.

On May 18 of this year, USA Today stated:

What's happening? Clever lawyers for partisan activists, ideological causes and special interests have invented a new way to channel unlimited money into campaigns and avoid all accountability. Hiding behind the guise of ''issue advocacy'' and an obscure part of the tax law, nameless benefactors with thick bankrolls can donate unlimited sums to entities known as ''section 527 committees,'' beyond the reach of the campaign-reporting laws designed to curb such abuses.

If the Chinese Army had discovered this tactic first, its infamous contributions of 1996 would have been quite legal. It wasn't supposed to be this way. Post-Watergate reforms a quarter-century ago required that all donations of $200 and more be publicly reported by name. There would be no more ''hidden gifts'' of $2 million and up like those that helped fuel the illegal activities of Richard Nixon's re-election campaign. At least voters would know where a candidate's political debts lay.

But that is not the way the system has evolved. And today no one knows how many anonymous contributors are exploiting the loopholes in the law or how much these loopholes are adding to the swamp of money in politics.

USA Today sums it up well. This is a dark, uncontrolled sector of the political landscape. It is a danger to our electoral system. Unfortunately, unless we act, the problem will only grow worse.

The Associated Press reported on June 6:

At crucial moments in the presidential campaign, George W. Bush has benefited from millions of dollars in advertising paid for by mysterious groups and secret donors.

Similar ads have also boosted Vice President Al Gore, but they generally were done by well-established organizations with clear agendas. Still, their donors remained secret, too.

It's a new form of political warfare that's quickly becoming the tool of choice for people looking to influence Election 2000, made possible by a once-obscure provision in the tax code that lets anyone form a group and spend money on campaign-style ads without saying who is paying for them.

This amendment in no way restricts the ability of any individual or organization from spending money to influence a political or electoral system. I believe 527 should be abolished completely. I am not sure that at this moment in time we have sufficient votes to do that in the Senate.

This amendment protects free speech but recognizes that the public has a right to know who is speaking. This amendment gives the American public an answer to the question raised by the Associated Press story; namely, who is paying for these multimillion-dollar ad campaigns?

While the rhetoric of speech being protected is sometimes bantered around without much thought, it is not actually speech that is constitutionally protected but the individual who is protected to speak his or her thoughts. Speech is not naturally occurring. It is not created of matter and therefore exists outside of the human realm. It is the individual who is protected. Under this amendment, the individual is protected. He or she can speak their will. Again, the public is given the right to know who is speaking.

The 2000 Federal election cycle has brought a new threat to the integrity of our Nation's election process: the proliferation of so-called stealth PACs operating under section 527 of the Tax Code. These groups exploit a recently discovered loophole in the Tax Code that allows organizations seeking to influence Federal elections to fund their election work with undisclosed and unlimited contributions at the same time as they claim exemption from both Federal taxation and the Federal election laws.

Section 527 of the Tax Code offers tax exemption to organizations primarily involved in election-related activities such as campaign committees, party committees, and PACs. It defines the type of organization it covers as one whose function is, among other things, ''influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office. . ..''

Because the Federal Election Campaign Act uses near identical language in defining entities it regulates, organizations that spend or receive money ''for the purpose of influencing any election for Federal office,'' section 527 formerly had been generally understood to apply only to those organizations that register as political committees under, and comply with, Federal election campaign laws, unless they focus on State or local activities and do not meet certain other FECA requirements.

Nevertheless, a number of groups engaged in what they term ''issue advocacy campaigns'' and other election-related activity recently began arguing that the near identical language of FECA and section 527 actually mean two different things. In their view, they can gain freedom from taxation by claiming they are seeking to influence the election of individuals to Federal office but may evade regulation under FECA by asserting they are not seeking to directly influence an election for Federal office.

Let me repeat that. This is what these organizations are saying: They can gain freedom from taxation by claiming they are seeking to influence the election of individuals to Federal office, but they evade regulation under Federal election laws by asserting they are not seeking to directly influence an election for Federal office.

As we have seen in the past, they simply avoid using the infamous six words noted in the Buckley decision as a footnote; namely, ''vote for, vote against, support'' or ''oppose.'' As a result—because unlike other tax exempt groups such as 501(c)(3)s and (c)(4)s, section 527 groups don't even have to publicly disclose their existence—these groups gain both the public subsidy of tax exemption and the ability to shield from the American public the identity of those spending their money to try to influence our elections.

Indeed, according to news reports, newly formed 527 organizations pushing the agenda of political parties are using the ability to mask the identity of their contributors as a means of courting wealthy donors who are seeking anonymity in their efforts to influence our elections.

There are some in this body who would fully regulate 527s under the FECA. This amendment doesn't do that. While I would personally support such an effort, this amendment does not impose the burdens mandated under FECA to 527 organizations. This amendment would, however, require 527 organizations to disclose their existence to the IRS, to file publicly available tax returns, and to file with the IRS or make public reports specifying annual expenditures of over $500 and identifying those who contribute more than $200 annually to the organization. What could be more simple? What could be more fair, honest, and straightforward?

The Washington Post recently stated:

For years, opponents of campaign finance reform have been saying that disclosure is disinfectant enough. Don't enter the swamp of trying to regulate the raising and spending of campaign money, they say; just require the prompt reporting of contributions, and let the voters perform the regulatory function at the polls.

This is an argument that has been made continuously by my colleagues. On September 26, 1997, the senior Senator from Kentucky stated, in regards to contributor information reported by the Democratic National Committee:

Disclosure would have been the best disinfectant.

On the same day, on the floor of the Senate, the majority leader stated:

Why don't we, instead, go with freedom, open it up, have full disclosure and let everybody participate to the maximum they wish?

I believe this amendment is 100 percent in accordance with Senator LOTT's comments. For the information of my colleagues, the amendment places no new restrictions of any kind on giving to so-called 527 organizations or how they spend their money. It merely mandates full disclosure.

Senator LOTT stated on May 13, 1992:

It seems to me that something that has that big an influence on an election, campaign election, should at least be reported. Disclosure. That is the key. Let us always disclose to the American people where we are getting our money, where it is being spent. That is the answer.

On September 26, 1997, Senator BENNETT stated:

So, if you are going to look for a local example of something that works, you could say, based on my state's experience, that we ought to open the whole thing up and let corporate contributions come in as well as individual contributions. The one thing that we do have in Utah that has made it work is full and complete disclosure so that everybody knows that, if the Utah Power and Light company is giving to X campaign, that is on the public record. And when the Governor goes to deal with utility regulation, everybody knows how much the power company gave him.

Under this amendment, 527 entities would disclose their contributors exactly in the manner Senator BENNETT claims should be done.

Senator CRAIG, on February 24, 1998, stated:

> Instead [of McCain-Feingold] full and immediate public disclosure of campaign donations would be a much more logical approach.

To be fair, Senator CRAIG was referring to contributions to candidates. But we all recognize that political ads that run under the 527 loophole are designed to accomplish the exact same goal as candidate-run ads: to elect or defeat candidates or causes and, as such, the contributors to 527s, such as contributors to candidates, should be immediately and fully disclosed.

The clarion call for greater disclosure has been heard and it is time we acted. This amendment is not designed to give any one party any advantage over the other. As I noted earlier in my remarks, both parties are the beneficiaries of 527 expenditures.

As the Washington Post editorialized:

> Both parties use these Section 527 committees. The failure to disclose is insidious, the ultimate corruption of a political system in which offices if not the office holders themselves, are increasingly bought. At least, they could vote for sunshine. Or is the truth too embarrassing for either donors or recipients?

Many times, I have stood on the floor of the Senate and argued for the constitutionality of the so-called McCain-Feingold legislation. I strongly believe that campaign contributions should not only be disclosed but that they can be constitutionally limited. Recent Supreme Court decisions clearly affirm that fact.

But there was dissent noted in the most recent Supreme Court case on campaign finance reform. I want to note for the record that in Justice Kennedy's dissent he stated:

> What the Court does not do is examine and defend the substitute it has encouraged, covert speech funded by unlimited soft money. In my view, that system creates dangers greater than the one it has replaced. The first danger is the one already mentioned: that we require contributors of soft money and its beneficiaries mask their real purpose. Second, we have an indirect system of accountability that is confusing, if not dispiriting, to the voter. The very disaffection or distrust that the Court cites as the justification for limits on direct contributions has now spread to the entire discourse.

In his dissent, Justice Kennedy also points out:

> Among the facts the Court declines to take into account is the emergence of cyberspace communication by which political contributions can be reported almost simultaneously with payment. The public can then judge for itself whether the candidate or the officeholder has so overstepped that we no longer trust him or her to make a detached neutral judgment. This is a far more immediate way to assess the integrity and the performance of our leaders than through the hidden world of soft money and covert speech.

In his dissent concerning the same campaign finance reform case, Justice Thomas paraphrases the Buckley case and states:

> And disclosure laws ''deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.''

Based on the dissent issued in the Missouri case and what was clearly stated by the majority, the kind of disclosure mandated by this amendment would not only be constitutional but is clearly in the public's best interest.

Mr. President, this amendment is the right thing to do. It is not as comprehensive an approach as I believe is necessary to deal with the numerous problems associated with our current campaign finance system. I believe much more needs to be done, and I intend to continue my fight with my friend from Wisconsin, Senator FEINGOLD, to truly reform our campaign finance laws. But it is a simple, easy-to-understand solution to one specific problem that currently plagues our electoral system. It is a solution we can enact today or tomorrow. It is a solution to a problem that has just begun and one that is easily solved. I hope my colleagues will support this amendment.

I have been in elected office since 1983. I first came to the other body and then to this one. If at the time I first came to the Congress of the United States you told me tickets would be sold by fundraisers for $500,000, that we would have organizations that took part in our political system and directly intervened in our elections, where it was not even required for contributors to disclose unlimited amounts of money, if you had told me that we would have a situation which would cause so much concern and anger and discontent, as in the 1996 election where money poured in even from foreign sources, that huge amounts of money from a Communist country, China, would pour into our elections—we may never know how much—that, in my view, would have been illegal and deserved the appointment of an independent counsel. The machinations that went into the Justice Department to prevent that from happening have been revealed.

If we don't require full disclosure of these 527s, then we will say as a body that it is legal for money to come from anywhere, from anyone, and it doesn't even have to be disclosed to the American people. That is a sad state of affairs, a very sad state of affairs.

I see my friend, Senator FEINGOLD, here waiting to speak, and I know others want to speak on this. I have said a couple of times on the floor of the Senate that I learned a lot in the last campaign in which I was involved. The most disheartening thing that I learned—which was affirmed long before I learned it by the 1998 election, which had the lowest voter turnout in history of the 18 to 26-year-olds in this country—was that particularly young Americans are becoming more and more disconnected and even alienated from their Government. Young Americans don't believe they are represented anymore. Young Americans in a focus group conducted by the Secretaries of State of America—those responsible for our elections in every State —the focus groups of young people were very alarming in their results. A lot of young people said they thought we were corrupt. A lot of young people said they would never run for public office. There is an unwillingness to serve the country—at least in the area of public service today—because young Americans believe that we no longer represent their hopes, dreams, and aspirations.

This situation has gradually evolved, as any evil does in life. We started out with a situation where soft money was set up that required full disclosure, and different organizations calling themselves ''independent'' began to accept unlimited amounts of money. But at least they fell under laws that required full disclosure. Now we have this new, burgeoning industry. I have no idea if it is tens of millions or hundreds of millions of dollars that will go into this political campaign under the guise of 527. I intend, later in the debate, to quote from news articles describing the dramatic growth of these 527s. Mr. President, it has to stop.

A funny thing is happening in the world. Today, the former Chancellor of the Federal Republic of Germany, Mr. Helmut Kohl, is in disgrace in his nation—the man who led his nation through a great deal of the cold war for 16 years. Helmut Kohl is in disgrace in the eyes of his countrymen because Helmut Kohl refuses to disclose the names of the people who gave him money for political purposes while he was the Chancellor of the Federal Republic of Germany.

In the United States of America, the beacon of home and freedom and the institutions of democracy throughout the world, we now have a situation where it is legal for anyone to give unlimited amounts of money which will directly affect American political campaigns. There is not even disclosure. It is evil in itself that unlimited amounts of money are able to be contributed because it is a direct violation of the $1,000 contribution limit which the U.S. Supreme Court just upheld as constitutional. But now we have reached a point where the Washington Post says failure to disclose is insidious, the ultimate corruption of a political system in which offices, if not the officeholders themselves, are increasingly bought. At least we could vote for sunshine.

I would like to yield to my friend from New York briefly because Senator FEINGOLD is waiting.

Mr. SCHUMER. Mr. President, I want to ask the Senator a question to clarify. His amendment is one of disclosure. Is that the same as the one the Senator from Connecticut introduced? It would not affect first amendment rights. It would not affect limits on how much you give but simply disclose what is given. Am I correct in that assumption?

Mr. MCCAIN. The Senator from New York is correct. I would like to say to the Senator from New York that we are doing this because perhaps we can't sell the whole package; perhaps we can't do the whole thing. This is in no way an indication that Senator FEINGOLD and I or the Senator from New York or the Senator from Connecticut are not equally committed to McCain-Feingold soft money elimination, et cetera. But at least let's get this ill cured.

How in the world a vote can be cast against disclosure of this is not comprehensible to me.

I thank the Senator.

Mr. SCHUMER. I think it is an excellent idea. I would like to speak later in support of the Senator's amendment.

Mr. MCCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I am very pleased to again be on the floor with my colleague and friend, the Senator from Arizona, and to join with him in offering this amendment.

I am especially pleased also to be offering this amendment with the Senator from Connecticut, Mr. LIEBERMAN, who has offered a bill in this same form.

I ask unanimous consent that the Senator from New York, Mr. SCHUMER, be added as a cosponsor of the amendment as well.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, if there is one thing on which the entire Senate should be able to agree, it is that we need to have full disclosure by groups participating in the electoral process by running advertisements that mention candidates.

This is a first step. In fact, it is only a first step on this bill. We intend to offer other steps, including our McCain-Feingold legislation concerning soft money, on this bill. But this is the first step.

The so-called 527 organizations that this amendment addresses are the newest wrinkle in the breakdown of our campaign finance laws.

These 527 groups are now openly and proudly flouting the election laws by running phony issue ads and refusing to register with the FEC as political committees or disclose their spending and contributors. It is time that Congress called a stop to this, not to try to keep anyone from speaking or otherwise participating in elections, but to give the American people information that they desperately need and deserve about who is behind the ads that are already flooding our airwaves, six months before the election.

There is no reason that our tax laws should give protection to any group that refuses to play by the election law rules. For that reason, I have cosponsored and wholeheartedly endorse S. 2582, a bill introduced earlier this year by Senators LIEBERMAN, DASCHLE, MCCAIN, and others to restrict the tax exempt status available under section 527 of the Internal Revenue Code only to those groups that register and report with the FEC. This amendment is even more mild. But at the very least, the public deserves more information on the financial backers and activities of groups that benefit from this tax exempt status, and that is what this amendment attempts to provide. This amendment simply seeks disclosure. It would be a small step towards addressing one of the loopholes in our current campaign laws that is eroding the public's faith in our electoral system. It's a small step, but an important step. It is the first step, and the second step is the ban on soft money.

Time and time again when we have debated reform here on the floor of the Senate, the opponents of the McCain-Feingold bill have said that they favor full and complete disclosure of campaign contributions and spending.

The Senator from Arizona did a fine job of sharing with us some of the quotes from Senators who said they would support disclosure even if they couldn't support a ban on soft money.

Well, those Senators who so confidently proclaim that full disclosure is the answer to our campaign finance problems should realize that they cannot be consistent in that view if they don't support this amendment. All this amendments seeks is disclosure, the most basic and commonsense tenet of our campaign finance laws, by groups that are spending millions of dollars to influence elections. It is said that sunshine is the best disinfectant. Here is our chance to throw some sunshine on this latest effort to cast a dark cloud on our campaign finance system.

Sadly, what to me is perhaps the most shameful thing about this whole process is we know that many Members of Congress are involved in raising money for these 527s.

Recently, there was a very disturbing report in the Washington Post about the majority leader urging hi-tech companies to contribute to a new group called Americans for Job Security that is now running ads supporting one of our colleagues who is up for reelection. Americans for Job Security is almost certainly claiming a tax exemption under section 527, but at the same time it will not disclose its contributors or its spending. And we all know of the highly publicized connections between the majority whip in the House, Mr. DELAY, and various 527 organizations.

These groups pose a special danger to the political process because if Members of Congress can organize them or raise money for them, the real possibility of corruption emerges. What is the difference between a million dollar contribution directly to a candidate and a million dollar contribution requested by a candidate that goes to a group that plans to run ads to support that candidate or, more likely, attack his or her opponent? There really is no difference when you come right down to it, but right now, the first contribution is illegal, as it should be, and the second contribution is not. It is legal. Our amendment does not prohibit that second contribution, it just asks that it be made public.

As groups proliferate, the chances of scandal increase as well. It will not be long before reports of legislative favors received by big donors to 527 groups start making the headlines. Or foreign money or money derived from organized crime making its way into our election process by way of 527s. The 527 loophole is a ticking time bomb of scandal.

As noted in the recent Common Cause report, ''Under the Radar: The Attack of Stealth PACs on our Nation's Elections,'' here are some of the groups that are taking advantage of the 527 loophole to collect unlimited contributions and use them to influence federal elections without any disclosure. Saving America's Families Everyday, the Republican Majority issues Committee, Citizens for Better Medicare, Republicans for Clean Air, Shape the Debate, Business Leaders for Sensible Priorities, the Peace Voter Fund, citizens for Reform, and the Sierra Club. When the American people see an ad by one of these groups, they will know it is coming from a Stealth PAC, a 527, but that's all they will know because these groups are currently not reporting anything to the FEC or the IRS.

Money, politics, and secrecy is a dangerous mixture. Mr. President. The least we can do is address the secrecy ingredient in this potion with this amendment. There is no justification whatsoever for allowing these groups to operate under the radar. None. Citizens deserve to know who is behind a message that is being delivered to them in the heat of a campaign. These groups that hide behind apple pie names are trying to obscure their identities from the public. The public is entitled to that information. And it is entitled to withhold a tax exemption from any group that would refuse to provide the information.

I think I have heard from almost every one of my colleagues recently

that they believe this campaign finance system is completely out of control, that they sense it is about to completely explode. We all know it. It is completely out of control. This is a first step to try to bring that control back and then to move on quickly to the effort to address the other even more enormous problem at this point—the problem of soft money being contributed to political parties.

I thank the Senator from Arizona and my colleagues on the floor, the Senators from Connecticut and New York, for their work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Chair.

I rise to support the amendment offered by the Senator from Arizona. I am proud to be a cosponsor of it and to join with him and the Senator from Wisconsin, my friend, and also my colleague from New York.

This is a bold but absolutely necessary step which was initiated by the Senator from Arizona, based on some work a bipartisan group did together earlier in the year to try to respond to this latest threat to the integrity of our Nation's election process, and that is the proliferation of so-called ''stealth'' PACs operating under section 527 of the Tax Code.

As my colleagues have indicated, these groups exploit a relatively recently discovered loophole in the Tax Code that allows organizations seeking to influence Federal elections to fund those elections with undisclosed and unlimited contributions at the same time as they claim exemption from both Federal taxation and the Federal election laws.

As I say these words, and as I have listened to my colleagues, I wonder about the folks listening to the proceedings on C-SPAN. People must justifiably be scratching their heads or, I hope, standing up in outrage at what is happening within our political system.

I was taught as a student at school long ago about the power of water, the natural force of water, to move and find weakness and then move through that weakness to continue to go forward. The flow of money in our political system today, which is not as natural as the movement of water through nature, seems to follow the same kind of unstoppable movement where it pursues a point of weakness in our legal system and pushes through, to the detriment of our democracy.

Section 527 is the latest point of vulnerability that has been found by the forces and flow of money in our political system. Section 527 offers tax exemption to organizations, primarily involved in election-related activities such as campaign committees, party committees, and PACs. That is what the law says it is supposed to do. It defines the type of organization it discovers as one whose function is, among other things, ''Influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office.''

Because the Federal Election Campaign Act uses nearly identical language to define the entities it regulates, section 527 formally had been generally understood to apply only to those organizations that register as political committees under the Federal Election Campaign Act.

Nevertheless, the flow of money moves to find a point of vulnerability in our existing legal system. A number of groups engaging in what they term ''issue advocacy campaigns'' and other election-related activities, have begun arguing that the near identical language of our Federal Election Campaign Act and section 527 actually mean two different things. This would be hilarious if it wasn't so serious. In their view, these groups gain freedom from taxation by claiming they are seeking to influence the election of individuals to Federal office, but they claim they can evade regulation under the Campaign Act by asserting that they are not seeking to influence an election for Federal office.

They are going two ways at once, trying to claim the benefit of two inconsistent laws, and, for the time being, getting away with it. As a result, unlike other tax-exempt groups, section 527 groups don't even have to publicly disclose their existence. They gain both the public subsidy of tax exemption and the ability to shield from the American public the identity of those spending their money to try to influence our elections. Indeed, according to news reports, newly formed 527 organizations pushing the agenda of political parties are using the ability to mask the identity of their contributors as a means of courting wealthy donors who are seeking anonymity in their efforts to influence our elections.

This is so venal, an end run on the clear intention of our laws, that I cannot believe we will let it continue. Section 527 organizations are not required to publicly disclose their existence. It is impossible to know the precise scope of this problem. The Internal Revenue Service private letter rulings, though, make clear that organizations that are intent on running what they call ''issue ad campaigns'' and engaging in other election-related activities are free to assert section 527 status. Of course, there have been numerous news reports that provide specific examples of groups taking advantage of these rulings.

Common Cause recently issued a report which is engaging in unsettling reading, under the title ''Under the Radar: The Attack of the Stealth PACs on Our Nations's Elections,'' which offers details on 527 groups set up by politicians, industry groups, right-leaning ideological groups, and left-leaning ideological groups. The advantages conferred by assuming this 527 form, which are the anonymity provided to both the organization and its donors, the ability to engage in unlimited political activity without losing your tax-exempt status, and significantly the exemption from gift tax which otherwise would be imposed on large donors, leaves no doubt that these groups will continue to proliferate as the November election approaches.

No one should doubt that the expansion of these groups poses a real and significant threat to the integrity and the fairness of our election system. One of the basic promises that our system makes is for full disclosure. Senator MCCAIN and Senator FEINGOLD have spoken of comments that have been made on this floor and elsewhere by those who opposed other forms of regulating and limiting campaign finance contributions, limits on expenditures, but at least support disclosure, sunshine, the right to know. The identity of the messenger, the identity of the contributor supporting a message, naturally, would help a citizen, a voter, reach a judgment on the quality and the effect of that message.

The risk posed by the 527 loophole goes even further than depriving the American people of critical information. I believe it threatens the very heart of our democratic political process because allowing these groups to operate in the shadows poses a real and present danger of corruption and makes it difficult for anyone to vigilantly guard against that risk. The press has reported that a growing number of 527 groups have connections to, or even have been set up by, candidates and elected officials who are otherwise limited—clearly, at least so is the intention of the law—by other laws. Allowing individuals to give to these groups and allowing elected officials to solicit money for these groups without ever having to disclose their dealings to the public, at a minimum leads to exactly the appearance of corruption that the Supreme Court in some of its election law cases has warned against and sets the conditions clearly that would allow corruption to thrive.

If people in public life are allowed to continue seeking money secretly, particularly sums of money that exceed what the average American makes in a year, there is no telling what will be asked for in return. And there is no predicting how many more tens of thousands, hundreds of thousands, millions of our fellow citizens will turn away from our political system because they reach the conclusion that there is not actually equal access to our Government; that an individual or group or corporation that gives hundreds of

thousands of dollars secretly to this kind of political committee clearly have more influence than they do, and it is not worth even turning out to vote.

In the hopes of forestalling this growing cancer in our body politic, a bipartisan group of Members of the Senate earlier this year introduced two bills to deal with this 527 problem. The first was what we called our aspirational bill. It would have completely closed the 527 loophole by making clear that tax exemption under 527 is available only to organizations regulated under the Federal Elections Campaign Act. It was pretty straightforward and, in my opinion, eminently sensible and logical. If this bill were ever enacted, groups would no longer be able to tell one thing to the IRS to get a tax benefit and then deny the same thing to the FEC, the Federal Election Commission, in order to evade Federal Election Campaign Act regulation.

But recognizing that a complete closing of this ever growing 527 loophole might not be possible to achieve in this Congress, we also offered a second alternative, slightly narrower. That is what this amendment is before the Senate now. It is aimed at forcing section 527 organizations simply to emerge from the dark shadows, from the secret corners, and let the public know who they are—that is not asking too much—where they get their money—that is a fundamental right—and how they spend it.

This amendment would require 527 organizations to disclose their existence to the IRS, to file publicly available tax returns and to file with the IRS and make public reports specifying annual expenditures of at least $500 and identifying those who contribute at least $200 annually to the organization. That is not asking very much. It is simple fairness, basic facts, respecting the public's right to know.

No doubt opponents of this amendment may claim the proposal infringes on their first amendment rights, perhaps, to free speech and association. But nothing in this amendment infringes on those cherished freedoms in the slightest bit. This amendment does not prohibit anyone from speaking. It does not force any group that does not currently have to comply with the Federal Elections Campaign Act or disclose information about itself to do either of those things. This amendment speaks only to what a group must do if it wants the public subsidy of tax exemption, something the Supreme Court has made clear that no one has a constitutional right to have. We in Congress, Representatives of the people, makers of the law, have the right to attach conditions in return for the public subsidy of tax exemption. As the Supreme Court explained in Regan v. Taxation with Representation of Washington, a 1983 case:

> Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system, [and] Congressional selection of particular entities or persons for entitlement to this sort of largess is obviously a matter of policy and discretion. . . .

That is policy and discretion to be exercised in the public interest by this Congress. Under this proposal, any group not wanting to disclose information about itself or abide by the election laws would be able to continue doing whatever it is doing now. It would just have to do so without the public subsidy of tax exemption conferred by section 527. Again, that is not asking too much.

We have become so used to our campaign finance system's long, slow descent that I fear it is sometimes hard to ignite the kind of outrage that should result when a new loophole starts to shred the very spirit of yet another law aimed at protecting the integrity of our system.

I suppose if there is any direct relevance of this proposal to the Department of Defense Authorization Act on which it is offered, it is that generations of Americans have fought, been injured, and died for our political system, our principles, our values: The right to exercise the franchise, the right to know. We are witnessing, without acting to correct it, the corruption and erosion of those basic freedoms.

This new 527 loophole should outrage us and we should act, I hope unanimously, across party lines, by adopting this amendment to put a stop to it.

Mr. President, I urge all our colleagues to join us in supporting this proposal. I thank the Chair and I yield the floor.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Colorado.

Mr. ALLARD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent Senators be allowed to speak on this issue, and therefore ask further proceedings under the quorum call be suspended.

Mr. ALLARD. I object.

The PRESIDING OFFICER. Is there objection?

Mr. ALLARD. I object.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I ask unanimous consent that the pending McCain amendment and the Robert Smith amendment be laid aside, the McCain amendment become the pending business at 1 p.m. on Thursday, and there be 2 hours equally divided on the McCain amendment, with a vote to occur in relation to the McCain amendment immediately following the scheduled vote re: HMO at 5 p.m. on Thursday.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. In light of this agreement, there will be no further votes this evening, and the Senate will resume the DOD authorization bill at 9:30 a.m. on Thursday morning.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Senator BYRD, who has been a tremendous leader on campaign finance reform for decades, Senator BIDEN, Senator REID of Nevada, and Senator LEVIN be added as cosponsors to the McCain-Feingold-Lieberman amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Michigan.

BIRTH OF SENATOR LEVIN'S GRANDDAUGHTER

Mr. LEVIN. Mr. President, one of the reasons I left the floor with great joy during the day was to greet the arrival of my granddaughter, Bess Rachel—who was delivered today. Bess is named after my mother. I am sure she will forgive me for doing this because she is too young to know the difference. Her mother, my daughter Kate, and my son-in-law Howard Markel, may be looking at us now. If they are, I hope they will forgive me, too. I am just a proud grandpa, with grandma Barbara there at the hospital in New York. That is why I disappeared for a few minutes.

As always, HARRY REID does yeoman work on this floor for all of us on this side of the aisle, obviously, but really for every Member of the Senate. I thank him for filling in.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INSTRUCTIONAL FACILITY AT FORT LEAVENWORTH

Mr. ROBERTS. Mr. President, I am concerned that the current primary instructional facility, Bell Hall, at the Command & General Staff College, U.S. Army Combined Arms Center, Fort Leavenworth, Kansas, is becoming incapable of performing its mission of preparing officers for positions of increased complexity and responsibility

within the United States Army and other services. Bell Hall is the central academic and instructional facility of the C&GSC but the building's deteriorating physical plant and patchwork communication infrastructure can no longer support the instructional requirements contained in current and evolving Army curriculum. I am concerned that if a replacement facility is not constructed as soon as possible maintenance costs will continue to increase while Army Operation and Maintenance resources decline and student access to state-of-the-art technology required to teach advanced warfighting skills will remain limited.

Mr. WARNER. I believe construction of a new Command & General Staff College instruction facility will be included in the FY 2003 through 2007 Military Construction Future Years Defense Plan and I would certainly encourage the Army to execute this project as soon as possible.

Mr. ROBERTS. I thank the distinguished chairman of the Senate Armed Services Committee for his consideration and ask that the conferees include language in the conference report noting the need to execute this essential project as soon as possible.

MORNING BUSINESS

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RETIREMENT OF STEVE BENZA

Mr. THURMOND. Mr. President, It is neither an understatement, nor a misstatement of fact, to say that the United States Senate is an impressive, awe inspiring, and unique institution for many different reasons. Certainly one of the biggest reasons that the Senate is such a special place is the talented, dedicated, and bright men and women who work in support of us and our duties. I rise to pay tribute to one of these individuals, Steve Benza, who is retiring today after thirty-two years of service as an employee of the United States Senate.

Though he retains some of the mannerisms and accent that one would expect to find in someone who was born in the Bronx, New York City, Steve Benza is for all intents and purposes a native of the Senate. His family moved to the Washington area in 1958 and he began working in the Senate while a high school student, spending his summer breaks as a Page. Following graduation, Steve spent time working on the Grounds Crew and in the Senate Post Office before seizing the opportunity to work as a staff photographer, and his career was launched. As an aside, I would be remiss if I did not mention the fact that Senate service is a family tradition with the Benzas, Steve's mother Christine Benza has served with the Architect of the Capitol for the past forty-years.

Beginning his career as a ''shooter'', even before the contemporary Photographic Studio was established back in 1980, Steve Benza has become a familiar and well liked member of the Senate family. During his career here, Steve has met hundreds of Senators, taken probably millions of pictures, and has become an instantly recognizable institution with trademark mustache and trusted camera slung over his shoulder. In his almost thirty-years of working as an official photographer, Steve Benza has seen and chronicled everything from the mundane and routine to the unusual and historic. Confirmation hearings for Supreme Court Justices, the Fiftieth Anniversary of the D-Day Invasion, the Inaugurations of four Presidents, dozens of State of the Union Addresses and Joint Sessions of Congress, and the Impeachment Trial of President Clinton are all among the events that have been covered by Steve Benza.

In 1997, Steve was promoted from his position of supervisor of the Senate Photographers to Manager of the Senate Photo Studio where he has proven himself not only to be an able administrator, but someone of vision. Under his direction, the Senate Photographic Studio has invested in new equipment and technology, embracing the revolution in digital photography which has allowed for many innovations including quicker turn around time on orders, the creation of an image data base, and expanded services that ultimately benefit us and our constituents. Also under his direction, the Senate Photo Laboratory facilities were upgraded and training opportunities for staff were increased. All in all, the contributions and leadership of Steve Benza have turned the Photo Studio into a modern operation, equipped with the technology of the new century, and as a result, he has increased the efficiency of this vital Senate support service. He unquestionably leaves an impressive legacy of dedication to his job, and he has set an excellent example for others to emulate.

It is hard to believe that after more than three-decades, Steve Benza has decided to retire. I know it is safe to say that he will missed by countless individuals including all one-hundred Senators, but I am certain that each of us will remember him. I had the pleasure of having Steve travel with me to the People's Republic of China when I led a delegation to that nation in 1997. Beyond putting together an impressive collection of images that chronicled our journey, Steve's relaxed disposition and ready sense of humor made what was a pleasurable journey all the more enjoyable.

As many of us know, Steve Benza is a devoted family man. Though I understand that he has not made-up his mind as to what he will do in his retirement, I am certain that spending time with his wife Alma, and children George and Annie, will be a big part of his activities, as will pursuing his passions of fishing and golfing. Regardless of what Steve chooses to do in the future, I wish him many years of health, happiness, and success, and I want him to know that I am grateful and appreciative for his many years of loyal service to the United States Senate. It has been a pleasure to know him and I will certainly miss him.

TRIBUTE TO COLONEL TERESA M. PETERSON, UNITED STATES AIR FORCE

Mr. LOTT. Mr. President, I would like to recognize the professional dedication, vision, and public service of Colonel Teresa M. Peterson who is leaving the 14th Flying Training Wing (14 FTW) after two years of devoted service to become the Director of Transportation on the Air Force staff in the Pentagon. It is a privilege for me to recognize her many outstanding achievements at Columbus Air Force Base, and to commend her for the superb service she has provided the Air Force and our great Nation.

As Commander of the 14th Flying Training Wing, Colonel Peterson spearheaded the training and education of our Nation's next generation of Air Force pilots. The epitome of an Air Force officer and accomplished pilot, she provided our Nation's future warriors with inspirational leadership and an outstanding training environment. Her talents were showcased in every aspect of Columbus AFB operations and highlighted through outstanding performances on command inspections such as the 1998 Headquarters Air Education and Training Command (AETC) Operational Readiness Inspection.

Colonel Peterson's quality of life initiatives for Columbus AFB provided the installation with $56 million in improvements. Those initiatives included construction of a $6.3 million Unaccompanied Officer Quarters and a $25 million, 202 unit, highly sensitive family housing complex. She deftly negotiated resolution of several complex contracting challenges on the family housing project and ensured that contractor issues were handled quickly and efficiently. Her vision and oversight of numerous facilities construction and renovation projects significantly enhanced the training environment and living conditions of Columbus AFB personnel.

Under Colonel Peterson's leadership and guidance, Columbus AFB was a showcase for visitors which included